

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Thomas E. Yingst Art Unit 3653
Serial No.: 10/662,783
Filed: September 15, 2003
Confirmation No.: 9519
For: PRODUCT SERVER WITH BREATH GUARD
Examiner: Jeffery A. Shapiro

DECLARATION OF MICHAEL MCGAHA UNDER 37 CFR 1.131

1. I am currently employed by Duke Manufacturing Company ("Duke"), assignee of the above-referenced application, as a design and production engineer. I am familiar with the development and completion of the food product server described in the above-referenced application ("FPS").

2. Duke's FPS was conceived and completed prior to August 27, 2003. As evidence of conception and completion prior to this date, attached hereto as Appendix A are assembly drawings I prepared for production of the FPS. These drawings bear a date which has been blocked out but which is before August 27, 2003. A number of units based on these drawings were constructed, some of which I personally assembled and operated to ensure they performed correctly. The units did in fact perform satisfactorily. At a later date, two of these units were used in performance tests conducted at Duke. These tests were conducted to compare different types of food pans used in the server. The photos attached as Appendix B show these units in operation during such tests. The photos bear a date which has been blocked out but which is before August 27, 2003.

4. Appendix C is a copy of one of the photos of Appendix B marked to show relevant parts of the two units used in the tests. As shown in the photo, the two units are positioned end to end. Each unit (FPS) has a front customer side 13 (the left side in the photo), a rear employee side 17 (the right side in the photo), a cabinet 5 having a counter top surface 31 defining a generally horizontal plane and a recess 23 below the horizontal plane for receiving food serving pans 27 for holding food products. A breath guard 21 is mounted for pivotal movement with respect to the cabinet between a lowered

substantially horizontal position (see left FPS) for covering food products in the recess and a raised position (see right FPS) in which the breath guard is configured to provide a barrier to contamination of the food products by customers on the customer side of the server while allowing access to the food products from the employee side of the breath guard. The breath guard 21 is sufficiently transparent to allow viewing of the food products held in the food product server. Each server has a first extensible and retractable power assist device 95 biased toward a position for applying a lifting force to the breath guard to assist in moving it toward its raised position, and a second extensible and retractable power assist device 97 that is not biased toward a position but that resists movement of the breath guard from its raised position to its lowered position thereby providing controlled downward movement of the breath guard. I designed and operated the units, and I can attest that the power assist devices operated in this manner before August 27, 2003. The power assist device 95 which is used to apply a lifting force to the breath guard is identified as a "gas piston cylinder" (Item Nos. 11 and 12) on page 2 of Appendix A, and the power assist device 97 used to resist downward movement of the breath guard is identified as a "gas damping cylinder" (Item Nos. 9 and 10) on page 2 of Appendix A.

5. As further shown in the photo of Appendix C, the first and second power assist devices 95, 97 are mounted such that they do not extend down into the recess 23 below the aforementioned generally horizontal plane 31 as the breath guard is moved between raised and lowered positions. As further shown in the photo of Appendix C, the product server includes a frame 9 mounted on the cabinet. The frame has a pair of upright side frame members 39, 41 extending up from the cabinet 5 at opposite sides of the frame, and a shelf 51 spaced above the cabinet 5. The first power assist device 95 has connections with the breath guard and the cabinet, and the second power assist device 97 has connections with the breath guard and one of the upright side frame members 39. The breath guard 21 and first and second power assist devices 95, 97 are disposed entirely below the elevation of the shelf 51 when the breath guard is in its raised position (see right FPS in the photo of Appendix C).

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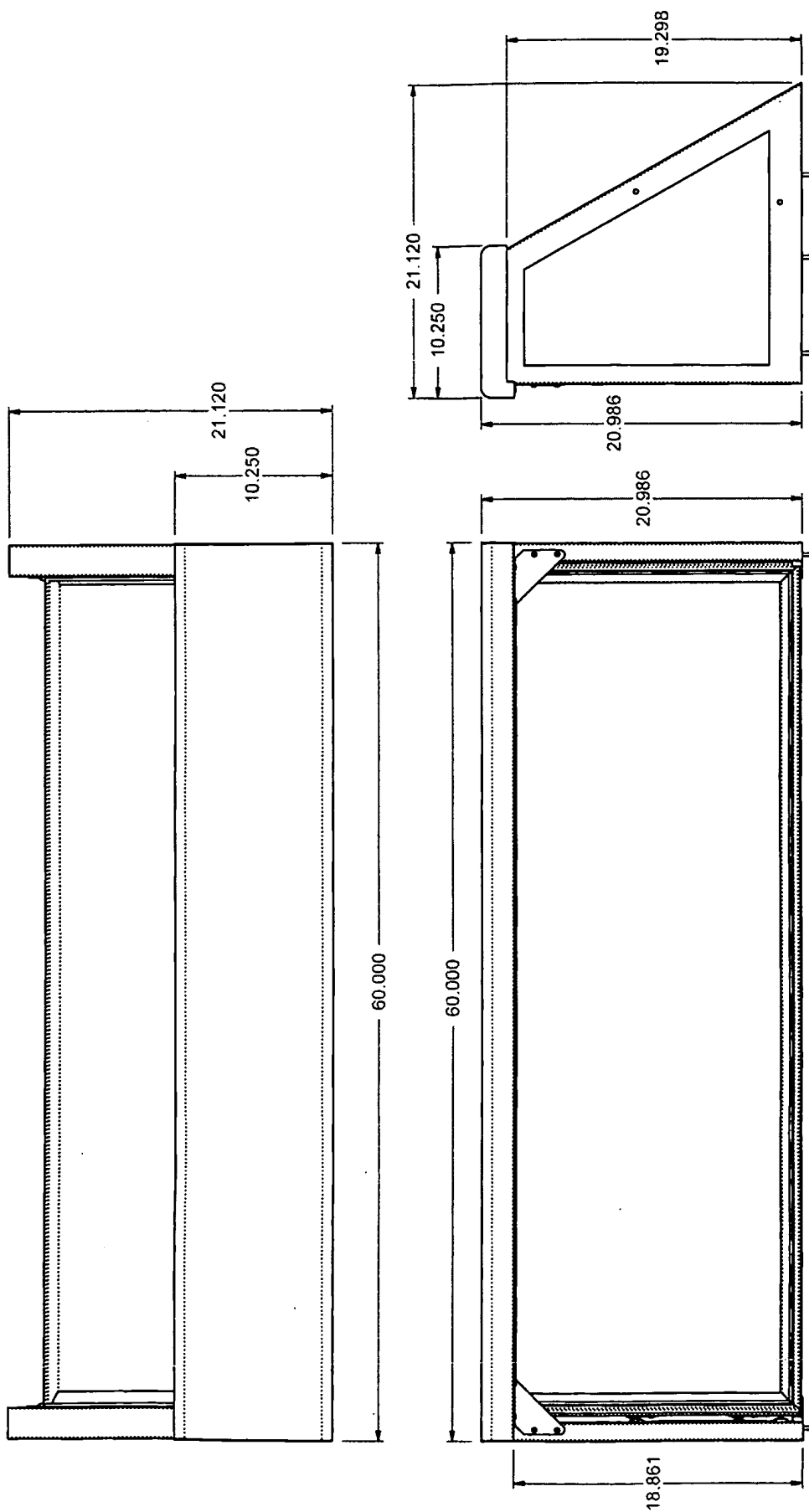
6. Before August 27, 2003, I personally operated Duke's FFS constructed as described above and shown in the attached Appendices A-C. I can vouch for the fact that the server, including the breath guard and power assist devices of the server, performed in the manner described above and in Duke's pending application prior to August 27, 2003.

7. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any issuing thereon.

4-23-09
Date

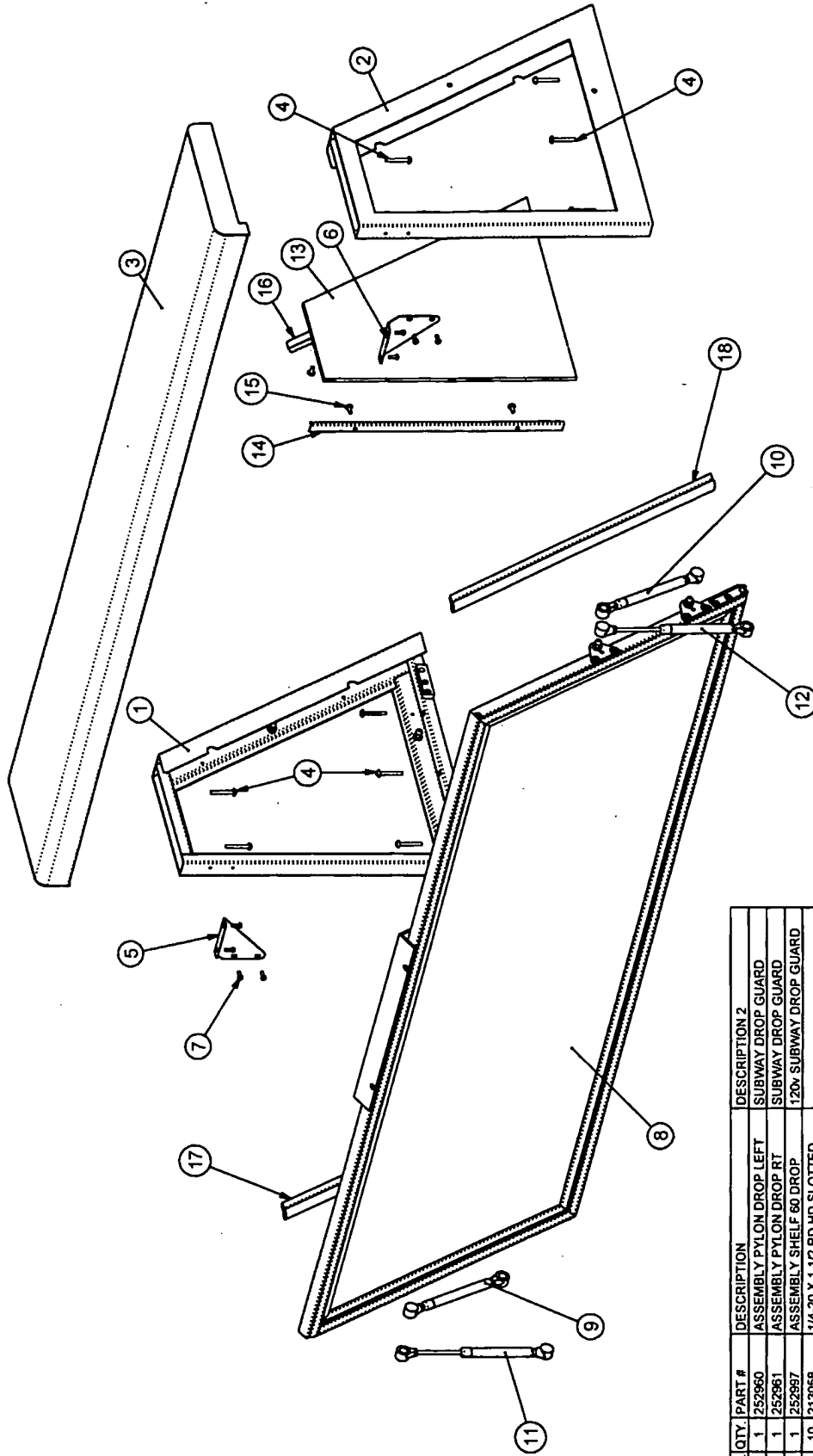
Michael McGaha
Michael McGaha

REV	MCF#	REV BY	DATE	DESCRIPTION
				Released for Production



DUKE MANUFACTURING CO. 3509 W. MAIN SEDALIA MO. 65301 "YOUR SOLUTIONS PARTNER"		ASSY GUARD 60 DROP 120V DROP GUARD	
UNLESS OTHERWISE NOTED: ALL DIMENSIONS ARE OUTSIDE TOLERANCES: DIMENSIONS $\pm .032"$ ANGLES $\pm 1^\circ$ HOLES $\pm .002"$	DRAWING BY MWM	DATE _____	PART FILE # 500
THE INFORMATION CONTAINED HEREIN IS THE SOLE PROPERTY OF DUKE MFG. ANY REPRODUCTION IN PART OR WHOLE WITHOUT WRITTEN PERMISSION IS PROHIBITED.	ASSEMBLY LINE _____	CUSTOMER _____	DWG / PART NO. 253015
SHEET 1 OF 3			SCALE 1:10

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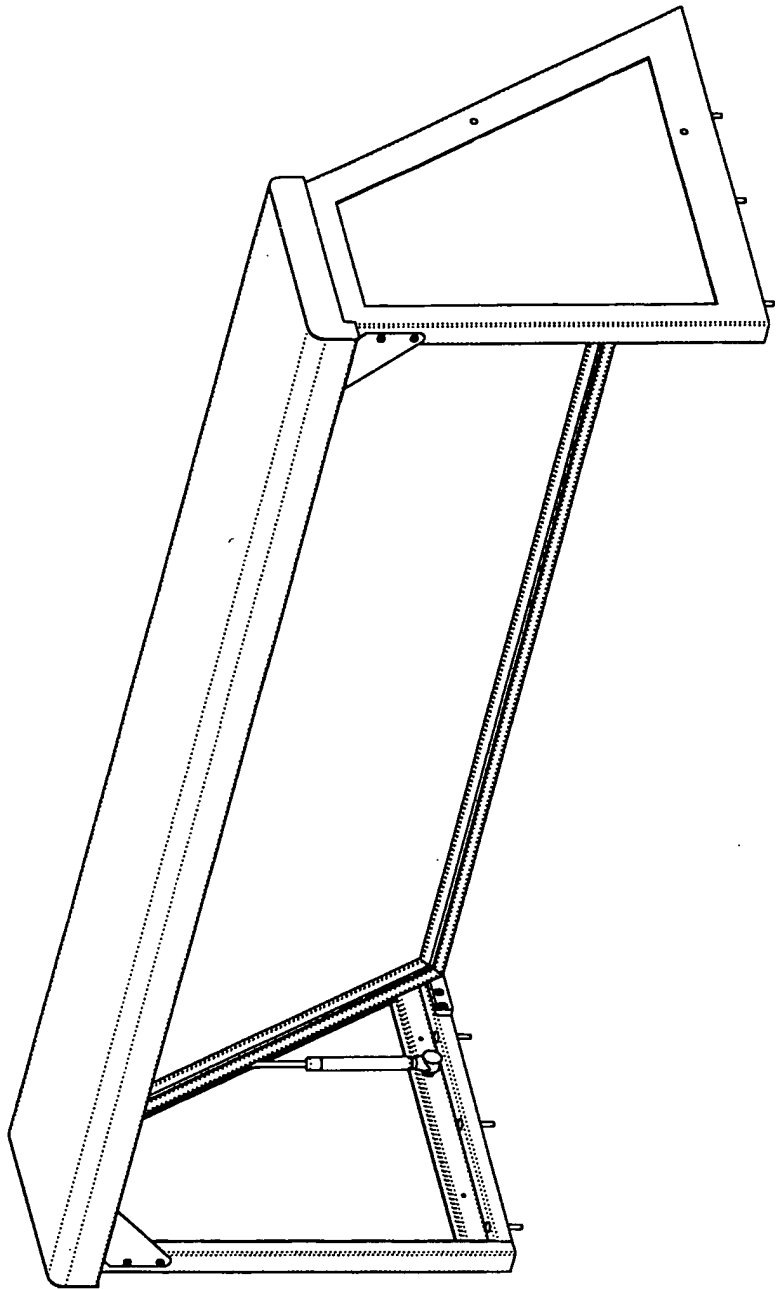
ITEM NO.	QTY.	PART #	DESCRIPTION	DESCRIPTION 2
1	1	252960	ASSEMBLY PYLON DROP LEFT	SUBWAY DROP GUARD
2	1	252961	ASSEMBLY PYLON DROP RT	SUBWAY DROP GUARD
3	1	252967	ASSEMBLY SHIELD 60 DROP	120" SUBWAY DROP GUARD
4	10	213058	1/4-20 X 1 1/2 HD SLOTTED	SUBWAY DROP GUARD
5	1	252929	BRACKET REIN ANTI SWAY LT	SUBWAY DROP GUARD
6	1	252930	BRACKET REIN ANTI SWAY RT	SUBWAY DROP GUARD
7	8	213196	SCREW 8-32X1/2 PAN PHIL	SELF TAPPING
8	1	252986	GUARD NOR-FAB 60 ASSY	SUBWAY BAIN DROP GUARD
9	1	214306	GAS DAMPING CYLINDER	GDE51-J
10	1	214306	GAS DAMPING CYLINDER	GDE51-J
11	1	214305	GAS PISTON CYLINDER	GG543-040-K
12	1	214305	GAS PISTON CYLINDER	GG543-040-K
13	1	214114	GLASS END PYLON	SUBWAY DROP GUARD
14	1	252931	ANGLE GLASS RETAIN REAR	SUBWAY DROP GUARD
15	4	213027	SCREW 10 - 24 X 1/2 TSF-M	
16	1	252933	ANGLE GLASS RETAIN FRONT RT	SUBWAY DROP GUARD
17	1	214932	EXTRUSION COLLAPSABLE GASKET 1.92 FOOT LEFT 30 DEG	
18	1	214932	EXTRUSION COLLAPSABLE GASKET 1.92 FOOT RIGHT 30 DEG	

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DWG / PART NO.: 253015
SCALE 1:10
SHEET 2 OF 3

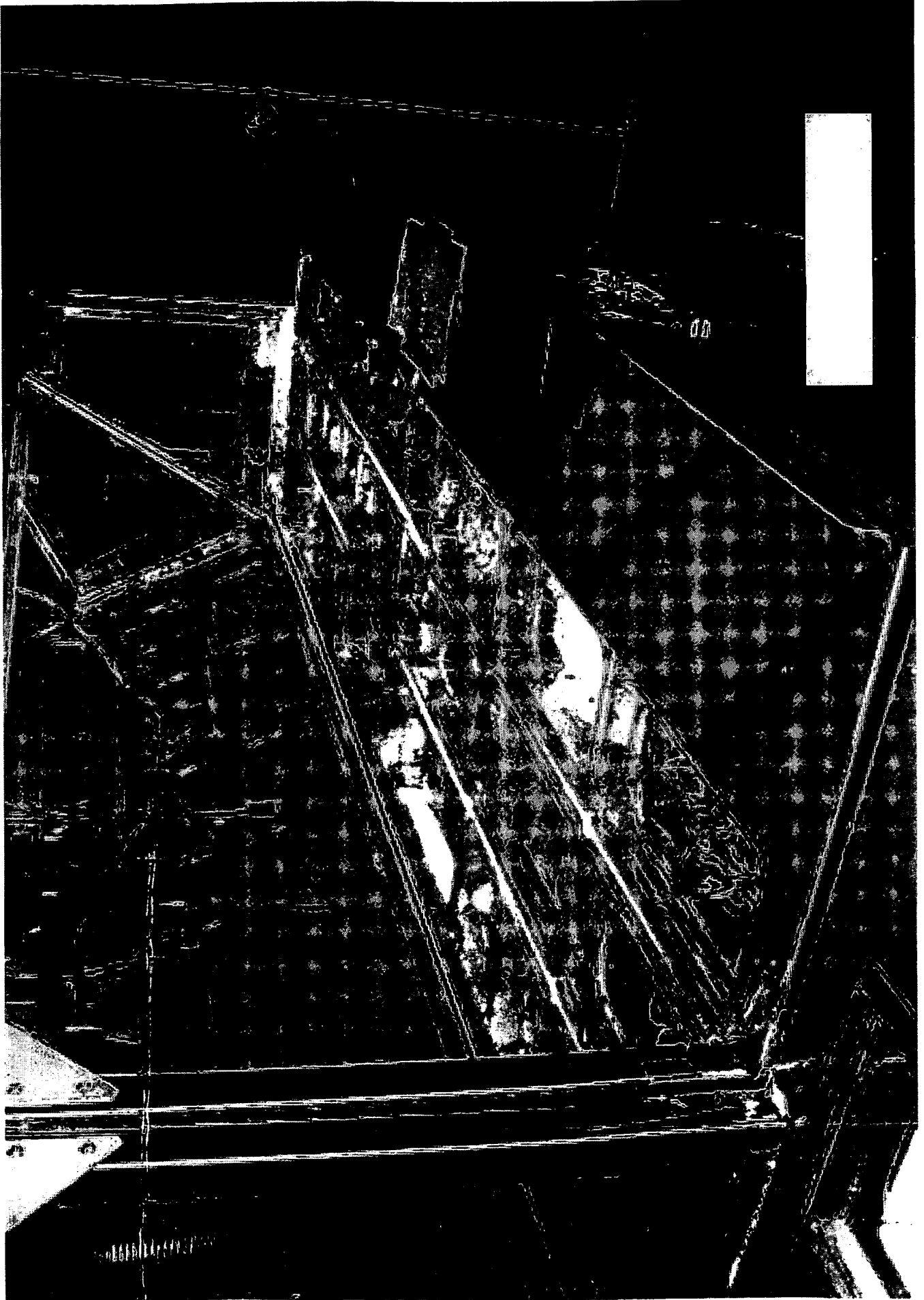
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ANGLES $\pm 1"$
HOLES $\pm .002"$
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ASSEMBLY LINE _____		ASSY GUARD 60 DROP 120V _____ DROP GUARD	
CUSTOMER: _____		PART FILE: 149	DWG/PART NO.: 253015
SHEET 3 OF 3		SCALE 1:3	





APPENDIX C

